

Dated: June 1, 2021



IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF ARIZONA

Eddward P. Ballinger Jr., Bankruptcy Judge

MINUTE ENTRY/ORDER

FOR MATTER TAKEN UNDER ADVISEMENT

Bankruptcy Judge: Eddward P. Ballinger, Jr.

Case Name: Susan Simpson - Chapter 13

Case Number: 2:20-bk-02088-EPB

Subject of Matter: New Horizons Roth 401K Profit Sharing Plan Objection
to Amended Plan

Date Matter Taken
Under Advisement: May 18, 2021

Date Matter Ruled
Upon: June 1, 2021

New Horizons Roth 401K Profit Sharing Plan ("New Horizons") is a secured creditor in this Chapter 13 proceeding. It objects to Debtor's request for an Order confirming her proposed Fifth Amended Chapter 13 Plan for two reasons: the plan was not proposed in good faith and Debtor cannot establish that she can make all required plan payments. Therefore, 11 U.S.C. § 1325(a)(6) & (7) prohibit plan approval. Although there is evidence supporting New Horizons' bad faith claim, it need not be addressed except in passing, because determining the merits of its second objection -- that Debtor has not demonstrated she can fund her plan -- resolves the parties' dispute.

To be entitled to a plan confirmation order, 11 U.S.C. § 1325(a)(6) requires the Court find that "debtor will be able to make all plan payments under the plan and . . . comply with the plan." In this case, Debtor has failed to make this showing. First, the evidence established that

Debtor has historically been unreliable in representing her financial condition. In connection with obtaining her loan from New Horizons, Debtor admitted she grossly exaggerated her income, claimed she possessed an income stream from a residential lease that never commenced, and falsely represented she owned a home that was used to support her loan entitlement. Post-petition, Debtor has not demonstrated that she can be relied upon to meet her obligations in a timely manner, if at all.

Second, the trial evidence established that Debtor does not currently have any business relationship that ensures she can make the payments her proposed plan requires. While she has aspirations of future business endeavors, she currently has no reliable funding source.

Third, Debtor acknowledged that even if the Court accepted her financial estimates, she would not be able to fund all payments required to satisfy creditor claims she agrees must be paid.

Based upon the foregoing,

IT IS ORDERED sustaining New Horizons' objection to Debtor's current proposed plan.